



House of Representatives

File No. 854

General Assembly

January Session, 2011

(Reprint of File No. 623)

Substitute House Bill No. 6598
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 27, 2011

**AN ACT CONCERNING OFFERS OF COMPROMISE IN
CONSTRUCTION CONTRACT ARBITRATION PROCEEDINGS,
MEDIATION AND ARBITRATION OF CONSTRUCTION CONTRACTS,
AND ETHICAL VIOLATIONS CONCERNING BIDDING AND STATE
CONTRACTS.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2011*) (a) For the purposes of
2 this section, "construction contract" means any contract entered into on
3 or after October 1, 2011, for construction, renovation or rehabilitation
4 in this state, including any improvements to real property that are
5 associated with such construction, renovation or rehabilitation, or any
6 subcontract for construction, renovation or rehabilitation between an
7 owner and a contractor, a contractor and a subcontractor or a
8 subcontractor and another subcontractor. "Construction contract" does
9 not include (1) any public works or other contract entered into with
10 this state, any other state or the United States, or (2) a contract or
11 project funded or insured by the United States Department of Housing
12 and Urban Development.

13 (b) After a party to a construction contract has made a demand for
14 arbitration pursuant to the dispute resolution provision of the
15 construction contract, such party may, not more than once and at any
16 time before a final award is rendered by the arbitration panel, send by
17 certified mail, return receipt requested, to the opposing party or the
18 opposing party's attorney a written offer of compromise, signed by the
19 party or the party's attorney and directed to the opposing party or
20 attorney, offering to settle all of the claims set forth in the arbitration
21 for a sum certain. Within thirty days after being notified of the offer of
22 compromise and before a final award is rendered by the arbitration
23 panel, the opposing party or the opposing party's attorney may reply,
24 by certified mail, return receipt requested, with a written acceptance of
25 the offer of compromise agreeing to settle all claims set forth in the
26 arbitration for the sum certain specified in the offer of compromise. If
27 the opposing party or attorney does not accept the offer of compromise
28 within thirty days after being notified of the offer of compromise and
29 before a final award is rendered by the arbitration panel, the offer of
30 compromise shall be considered rejected and not subject to acceptance
31 under this section.

32 (c) After issuance of a final arbitration award and upon the
33 application of any party to a construction contract to confirm, vacate,
34 modify or correct the award, any party who made an offer of
35 compromise pursuant to subsection (b) of this section which the
36 opposing party failed to accept may file with the court proof of the
37 party's offer of compromise. If the court confirms, modifies or corrects
38 the arbitration award and ascertains from the record that the party has
39 recovered an arbitration award in an amount equal to or greater than
40 the sum certain specified in the party's offer of compromise, the court
41 shall add to the amount of the award eight per cent annual interest on
42 the total amount of such award, in addition to any interest awarded by
43 the arbitrator. The interest shall be computed from the date the
44 original arbitration demand for the subject proceeding was filed. The
45 court shall further award reasonable attorney's fees and costs for
46 bringing the action to confirm, vacate, modify or correct the award and

47 shall render judgment accordingly.

48 (d) This section shall not be interpreted to abrogate or modify the
49 contractual rights of any party concerning the recovery of attorney's
50 fees in accordance with the provisions of any written contract between
51 the parties to the arbitration.

52 Sec. 2. Section 42-158m of the general statutes is repealed and the
53 following is substituted in lieu thereof (*Effective October 1, 2011*):

54 Any provision in a construction contract for the performance of
55 work on a construction site located in this state that purports to require
56 that any dispute arising under the construction contract be mediated,
57 arbitrated or otherwise adjudicated in or under the laws of a state
58 other than Connecticut shall be void and of no effect, regardless of
59 whether the construction contract was executed in this state.

60 Sec. 3. Subsection (c) of section 1-101nn of the general statutes is
61 repealed and the following is substituted in lieu thereof (*Effective*
62 *October 1, 2011*):

63 (c) Any person who [violates] is found in violation of any provision
64 of this section by the Office of State Ethics pursuant to section 1-82 may
65 be deemed a nonresponsible bidder by a state agency, board,
66 commission or institution or quasi-public agency.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	New section
Sec. 2	<i>October 1, 2011</i>	42-158m
Sec. 3	<i>October 1, 2011</i>	1-101nn(c)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill has no fiscal impact, as it deals with private industry and does not impact the operations of state agencies.

House 'A' makes clarifying changes that will not result in a fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 6598 (as amended by House "A")*****AN ACT CONCERNING OFFERS OF COMPROMISE IN CONSTRUCTION CONTRACT ARBITRATION PROCEEDINGS AND MEDIATION AND ARBITRATION OF CONSTRUCTION CONTRACTS.****SUMMARY:**

This bill creates a procedure for parties in an arbitration proceeding related to certain construction contracts to send the opposing party an offer of compromise, offering to settle the underlying claim for a specified amount. It requires a court to add 8% annual interest to an arbitration award, and award reasonable attorney's fees and costs, if the opposing party rejected an offer of compromise that was less than the amount awarded to the recovering party following arbitration. These procedures are similar to those in existing law for offers of compromise in civil actions (CGS § 52-192a).

The bill also specifies that the existing prohibition on provisions in commercial construction contracts that require disputes to be adjudicated in another state or according to the laws of another state includes provisions concerning mediation or arbitration, as well as other types of adjudication.

The bill also accords contractors, potential contractors, and consultants due process before they are prohibited from bidding on state contracts because of alleged past unethical bidding practices.

*House Amendment "A" adds the provisions concerning bidding on state contracts by those with alleged ethics code violations. In the provisions concerning offers of compromise in construction arbitrations, the amendment specifies that the interest requirement

applies after a court modifies or corrects, as well as confirms, an arbitration award and determines that the recovering party was awarded an amount equal to or greater than its offer.

EFFECTIVE DATE: October 1, 2011

OFFERS OF COMPROMISE

Applicable Contracts

The bill's provisions on offers of compromise apply to contracts entered into on or after October 1, 2011 for construction, renovation, or rehabilitation in Connecticut, including improvements to real property associated with such work, or a subcontract for such work, between an owner and contractor, a contractor and subcontractor, or two subcontractors. However, these provisions do not apply to (1) contracts with any state or the federal government or (2) contracts or projects that are funded or insured by the U.S. Department of Housing and Urban Development (HUD).

Offer

The bill provides that after a party to a construction contract has demanded arbitration under the contract's dispute resolution provision, and before a final arbitration award is rendered, the party may send to the opposing party or his or her attorney a written offer of compromise, offering to settle the arbitration claims for a certain amount of money. A party may send such an offer only once.

The bill specifies that the offer must be signed by the party or attorney, and directed to the opposing party or attorney. It must be sent by certified mail, return receipt requested.

Acceptance

If the party receiving the offer of compromise wishes to accept it, the party must do so within 30 days of being notified of it and before a final arbitration award is rendered. The acceptance must be in writing, sent by the accepting party or that party's attorney. It must be sent by certified mail, return receipt requested.

If the party receiving the offer, or his or her attorney, does not accept it within this time frame, the offer is rejected and cannot be accepted.

Interest, Attorney's Fees, and Costs

After a party to a construction contract applies to confirm, vacate, modify, or correct a final arbitration award, the party to the arbitration who made an unaccepted offer of compromise may file proof of that offer with the court. If the court confirms, modifies, or corrects the arbitration award and determines from the record that the recovering party was awarded an amount at least equal to the amount in that party's offer of compromise, the court must add 8% annual interest to the award. This interest must be computed from the date the arbitration began, and is in addition to any interest awarded by the arbitrator. The court must also award reasonable attorney's fees and court costs for bringing the court action on the arbitration award, and render judgment accordingly. However, the bill does not affect the parties' contractual rights concerning attorney's fees.

PROHIBITION ON CONSTRUCTION CONTRACTS REQUIRING DISPUTES TO BE DECIDED IN ANOTHER STATE

The bill specifies that construction contract provisions requiring disputes under the contract to be mediated or arbitrated in another state, or according to another state's laws, are invalid. This prohibition applies to contracts for work at construction sites in Connecticut, regardless of whether the contract was signed here. But it does not apply to:

1. building contracts with any state, a municipality or other political subdivision of this or any state, or the federal government;
2. contracts or projects funded or insured by HUD;
3. contracts between an owner and a contractor for \$25,000 or less, or a subcontract resulting from such a contract; or

4. contracts for buildings intended for residential occupancy containing less than five units (CGS § 42-158i).

ETHICS CODE VIOLATIONS

Due Process for Contractors and Consultants

The bill requires the Office of State Ethics (OSE) to find a violation of the State Code of Ethics before contractors or consultants may be deemed nonresponsible bidders. This means OSE must investigate complaints of wrongdoing, offer respondents the opportunity for a hearing, and make a decision based on the evidence.

Under existing law, state agencies, boards, commissions, institutions, and quasi-public agencies may treat as nonresponsible bidders (and thus ineligible to win a state contract) prequalified contractors, large state construction or procurement contractors, consultants on state contracts, and people seeking those positions if they:

1. solicit from public officials or state employees information that is not available to other bidders in order to gain a competitive advantage;
2. intentionally, willfully, or recklessly defraud the state by charging an agency, board, commission, institution, or quasi-public agency for work not performed or goods not provided;
3. intentionally or willfully violate or circumvent competitive bidding and ethics laws; or
4. provide or direct someone else to provide information concerning donated goods and services to a state or quasi-public agency, its procurement staff, or a member of a bid selection committee with intent to unduly influence the award of a state contract.

The law also allows state agencies, boards, commissions, institutions, and quasi-public agencies to treat consultants as

nonresponsible bidders if they help negotiate a state contract and then they or the businesses with which they are associated serve as contractors, subcontractors, or consultants on the project, or as consultants to anyone seeking the contract.

Current law does not require that the OSE make a finding concerning such violations before the specified people or entities may be treated as nonresponsible bidders.

BACKGROUND

Related Bill

sHB 6273 (File 99) contains an identical provision requiring due process for contractors, potential contractors, and consultants before they are prohibited from bidding on state contracts because of alleged past unethical bidding practices.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 41 Nay 0 (04/06/2011)